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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/579,196

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EXAMINER

VO, HAI

ART UNIT

PAPER NUMBER

1787

NOTIFICATION DATE

DELIVERY MODE

08/27/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No. 10/579,196	Applicant(s) WOOLFSON ET AL.	
	Examiner Hai Vo	Art Unit 1787	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-39 is/are pending in the application.
- 4a) Of the above claim(s) 38 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Drawings

1. The drawings were received on June 21, 2010. These drawings are acceptable.
2. The 112 rejections have been withdrawn in view of the present amendment.
3. All of the art rejections are maintained.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 19, 23, 27, 28 and 35 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Crye et al. (US 6,892,392). Crye teaches a personal body armor having hard armor plates on the front and back of the wear which extend between a left vest sections and a

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right vest section. Crye discloses a plurality of foam pads secured to the interior of the vest sections (abstract). The foam pad is formed from a viscoelastic foam which is enclosed with a 3D spacer fabric (column 3, lines 35-40). GB 2 353 048 will be relied on as evidence showing that the 3D spacer fabric includes a pair of spaced-apart knitted layers with spacer yarns extending between the knitted layers (figure 2). GB '048 discloses the 3D spacer fabric can be manufactured from the Mueller Textil GmbH (page 16). This is the same spacer fabric used by the instant invention. The spacer yarns form an air layer. It appears that Crye is using the same spacer fabric as the instant invention; therefore, it is the examiner's position that the relative stretching property, relative tensile strength would be inherently present like material has like property. This is in line with *In re Spada*, 15 USPQ 2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties. Further, it seems from the claim, if one meets the structure recited, the properties must be met or Applicant's claim is incomplete (Note discussion found in *Ex parte Slob*, 157 USPQ 172). Accordingly, Crye anticipates or strongly suggests the claimed subject matter.

7. Claims 19, 23-28, and 33-36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over DE 20309794. DE'794 discloses a mattress comprising a fabric covering (3,4,5), a spacer fabric (8,6, 9) and a foam core 12 (drawing). The fabric covering contains a water vapor permeable layer 4 (page 7). This reads on the claimed vapor permeable

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outer cover. The foam core is a viscoelastic foam material (page 2). The spacer fabric having a pair of spaced-apart knitted layers with spacer yarns extending between the knitted layers (pages 7 and 8). The spacer yarns form an air layer. The spacer fabric is of knitted polyester material. The spacer fabric has a thickness of 4.0 mm (page 8). The mattress cover can be removed and washed (page 10). This at least indicates that the foam core of the mattress is completely covered with the fabric covering and the spacer fabric. It appears that DE'794 is using the same spacer fabric as the instant invention; therefore, it is the examiner's position that the stretching property, tensile strength would be inherently present like material has like property. This is in line with *In re Spada*, 15 USPQ 2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties. Further, it seems from the claim, if one meets the structure recited, the properties must be met or Applicant's claim is incomplete (Note discussion found in *Ex parte Slob*, 157 USPQ 172). Accordingly, DE'794 anticipates or strongly suggests the claimed subject matter.

8. Claims 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 20309794 as applied to claim 19 above, in view of Landvik et al. (US 6,159,574). DE'794 does not specifically disclose the mattress further comprising a supporting substrate laminated to the viscoelastic foam core. Landvik, however, discloses a mattress comprising a polyurethane foam layer 5 which is used in combination with a viscoelastic foam layer 6 as shown in figure

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3. The polyurethane foam reads on the claimed support substrate. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a support substrate in combination with a foam core of DE'794 motivated by the desire to provide a mattress with desired support, thereby offering an increased comfort to the user.
9. Claims 19, 23-28, and 31-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2 353 048 in view of Landvik et al. (US 6,159,574). GB '048 teaches a mattress comprising a foam core, a liquid impermeable layer and a spacer fabric provided on the liquid impermeable layer (abstract; and page 13, lines 25-30). The spacer fabric having a pair of spaced-apart knitted layers with spacer yarns extending between the knitted layers (figure 2). The spacer yarns form an air layer. The spacer fabric is of knitted polyester material (page 12, lines 5-10). The spacer fabric has a thickness of 4.5 mm (page 16, lines 18-20). The mattress is completely covered with a spacer fabric (page 15, lines 15-19). It appears that GB '048 is using the same spacer fabric as the instant invention; The spacer fabric is manufactured from the Mueller Textil GmbH (page 16). This is the same spacer fabric used by the instant invention. Therefore, it is the examiner's position that the relative stretching property, relative tensile strength would be inherently present like material has like property. This is in line with *In re Spada*, 15 USPQ 2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties. GB '048 does not specifically disclose the foam core formed from a viscoelastic foam. Landvik,

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however, discloses a mattress comprising an air permeable layer 8, a first viscoelastic foam layer 2, a second viscoelastic foam layer 4 and an air permeable layer 8 (figure 1). Lanvik teaches a mattress comprising a polyurethane foam layer 5 which is used in combination with the viscoelastic foam layer 6 as shown in figure 3. The polyurethane foam reads on the claimed support substrate. Lanvik also teaches an outer covering which is waterproof, vapor-permeable cover made of nylon fabric material coated with polyurethane film (column 3, lines 35-40). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute a viscoelastic foam material for the foam core of GB '048 motivated by the desire to provide a mattress with special pressure-relieving properties for preventing and healing of pressure sores. The viscoelastic foam tends to soften in response to body heat. The mattress subsequently molds to the form of the users body, allowing the pressure to be absorbed uniformly distributed evenly across the mattress so as to prevent and healing the pressure sores. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a support substrate in combination with a foam core of GB '048 motivated by the desire to provide a mattress with desired support, thereby offering an increased comfort to the user. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a vapor permeable outer cover on the spacer fabric motivated by the

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desire to allow the foam layer to breathe while preventing liquids from reaching the foam material.

10. Claims 19, 23-31, and 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hedley (US 2006/0188689) in view of GB 2 138 012. Hedley teaches a floor mat comprising a foam backing layer and a textile layer as shown in figure 2. The textile layer includes a spacer fabric having a first fabric layer, a second fabric layer and an intermediate pile layer that spaces the first and second fabric layers. The intermediate pile layer reads on the claimed air layer. The spacer fabric is of knitted polyester material (paragraphs 18 and 22). The spacer fabric has a thickness of 2 to 20 mm (paragraph 10). The foam backing is bonded to the textile layer by means of an adhesive material (paragraph 44). The floor mat further includes a nonwoven layer provided between the textile layer and the backing layer (paragraph 54). It appears that Hedley is using the same spacer fabric as the instant invention; therefore, it is the examiner's position that the relative stretching property, relative tensile strength would be inherently present like material has like property. This is in line with *In re Spada*, 15 USPQ 2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties. Further, it seems from the claim, if one meets the structure recited, the properties must be met or Applicant's claim is incomplete (Note discussion found in *Ex parte Slob*, 157 USPQ 172).

Hedley does not specifically disclose the foam backing layer formed from a viscoelastic foam. GB '012, however, discloses a floor mat comprising a viscoelastic foam made from polyurethane foam which has excellent sound absorbing capacity (abstract). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute a viscoelastic foam material for the foam backing layer of Hedley motivated by the desire to provide a floor mat with excellent sound absorbing capacity without compromising the weight of the floor mat.

The recitation that the article is a "laminated body contact support element" has not given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Response to Arguments

11. All of the art rejections have been maintained for the following reasons.

Applicants contend that none of the applied references teach or suggest the maximum stretch of the outer layer of the spaced knitted fabric material being less than the breaking stretch of the underlying viscoelastic foam layer material. The examiner respectfully disagrees. Crye discloses that the foam pad is formed from a viscoelastic foam which is enclosed with a 3D spacer fabric (column 3, lines 35-40). GB 2 353 048 will be relied on as evidence showing that the 3D

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spacer fabric includes a pair of spaced-apart knitted layers with spacer yarns extending between the knitted layers (figure 2). The spacer yarns form an air layer. The spacer yarns are formed from polyester. GB '048 discloses the 3D spacer fabric is manufactured from the Mueller Textil GmbH (page 16). This is the same spacer fabric used by the instant invention. Therefore, it is the examiner's position that the relative stretching property, relative tensile strength would be inherently present like material has like property. This is in line with *In re Spada*, 15 USPQ 2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties. Further, it seems from the claim, if one meets the structure recited, the properties must be met or Applicant's claim is incomplete (Note discussion found in *Ex parte Slob*, 157 USPQ 172).

DE'794 teaches the 3D spacer fabric which includes a pair of spaced-apart knitted layers with spacer yarns extending between the knitted layers (pages 7 and 8). The spacer yarns form an air layer. The spacer fabric is of knitted polyester (page 7). As the 3D spacer fabric of DE'794 meets all the structural limitations required by the claim, it is not seen that the relative stretching would or could not be inherently present as like material has like property. This is in line with *In re Spada*, 15 USPQ 2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties. Further, it seems from the claim, if one meets the structure recited,

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the properties must be met or Applicant's claim is incomplete (Note discussion found in *Ex parte Slob*, 157 USPQ 172).

Hedley teaches the 3D spacer fabric which includes a pair of spaced-apart knitted layers with spacer yarns extending between the knitted layers (paragraphs 18 and 22). The spacer yarns form an air layer. The spacer fabric is of knitted polyester (paragraphs 18 and 22). As the 3D spacer fabric of Hedley meets all the structural limitations required by the claim, it is not seen that the relative stretching would or could not be inherently present as like material has like property. This is in line with *In re Spada*, 15 USPQ 2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties. Further, it seems from the claim, if one meets the structure recited, the properties must be met or Applicant's claim is incomplete (Note discussion found in *Ex parte Slob*, 157 USPQ 172). Accordingly, the art rejections are sustained.

Conclusion

12. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory

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period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (571) 272-1485. The examiner can normally be reached on Monday through Thursday, from 9:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hai Vo/
Primary Examiner, Art Unit 1787